

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jennifer Smith	Team: APU	CCRB Case #: 201804434	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 06/03/2018 12:45 AM	Location of Incident: PSA 4 stationhouse	Precinct: 09	18 Mo. SOL 12/3/2019	EO SOL 12/3/2019	
Date/Time CV Reported Sun, 06/03/2018 2:32 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sun, 06/03/2018 2:32 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Matthew Ferguson	07017	956642	PSA 4
2. SGT Ricardo Montilla	5419	947270	PSA 4
3. POM Oscar Quezada	03525	940597	PSA 4

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Jesse Williamson	7611	955667	PSA 4
2. POM Luis Velandia	16100	957249	PSA 4
3. POF Jacqueline Cifuentes	05297	928073	PSA 4
4. SGT Carlos Roberts	4145	937889	PSA 4
5. POM Thomas Mccue	25893	948292	PSA 4
6. POM David Porras	08967	939244	PSA 4

Officer(s)	Allegation	Investigator Recommendation
A.SGT Ricardo Montilla	Abuse: Sergeant Ricardo Montilla authorized the strip-search of § 87(2)(b)	
B.SGT Ricardo Montilla	Abuse: Sergeant Ricardo Montilla authorized the strip-search of § 87(2)(b)	
C.POM Matthew Ferguson	Abuse: Police Officer Matthew Ferguson took a photograph of § 87(2)(b)	
D.POM Oscar Quezada	Abuse: Police Officer Oscar Quezada did not process § 87(2)(b)'s complaint regarding officers.	

Case Summary

On June 3, 2018, § 87(2)(b) called the CCRB and filed this complaint. On June 6, 2018, § 87(2)(b) filed the same complaint on the CCRB's website.

On June 3, 2018, at approximately 12:45 a.m., Sergeant Ricardo Montilla, Police Officer Matthew Ferguson, Police Officer Thomas McCue, and Police Officer David Porras, Anti-Crime officers of PSA 4, strip-searched § 87(2)(b) and § 87(2)(b) at the PSA 4 stationhouse in Manhattan after having stopped the two men for jaywalking earlier that night (**Allegations A and B: Abuse of Authority**, § 87(2)(g)). PO Ferguson allegedly photographed § 87(2)(b) during his strip-search (**Allegation C: Abuse of Authority**, § 87(2)(g)). § 87(2)(b) and § 87(2)(b) were issued summonses for jaywalking, and § 87(2)(b) was issued an additional summons for possessing a small bag of a marijuana. Both men were released on their own recognizance that same day, and later that day, sometime in the afternoon before 2:32 p.m., Police Officer Oscar Quezada, of PSA 4, allegedly refused to process § 87(2)(b)'s complaint against officers at the PSA 4 stationhouse (**Allegation D: Abuse of Authority**, § 87(2)(g)).

Police Officer Jacqueline Cifuentes, Police Officer Jesse Williamson, and Police Officer Luis Velandia witnessed the initial interaction between the officers and § 87(2)(b) and § 87(2)(b) but were not involved in the strip-searches.

PO Ferguson's BWC (17 Board Review), PO Cifuentes' BWC (18 Board Review), PO Velandia's BWC (19 Board Review), PO Williamson's BWC (20 Board Review), and Sgt. Montilla's BWC (21 Board Review) captured the initial encounter, but not the strip-search at the stationhouse. Stationhouse video footage (22 Board Review) from inside the PSA 4 holding cell area captured the outside of the cells while officers strip-searched § 87(2)(b) and § 87(2)(b).

Findings and Recommendations

Allegation A - Abuse of Authority: Sergeant Ricardo Montilla authorized the strip-search of § 87(2)(b)

Allegation B - Abuse of Authority: Sergeant Ricardo Montilla authorized the strip-search of § 87(2)(b)

Allegation C - Abuse of Authority: Police Officer Matthew Ferguson took a photograph of § 87(2)(b)

The following facts are undisputed. The officers' initial interaction with § 87(2)(b) and § 87(2)(b)'s brother, § 87(2)(b) (who was ultimately warned and admonished), began with the officers ordering the men to disperse after they were observed drinking and smoking marijuana outside of the § 87(2)(b) on the Lower East Side. The three men complied and dispersed, but the same officers immediately stopped them for jaywalking outside of § 87(2)(b). § 87(2)(b) and § 87(2)(b) were transported to the PSA 4 stationhouse after they were determined to each have an open warrant. § 87(2)(b)'s § 87(2)(b) and § 87(2)(b) were strip searched in the PSA 4 holding cells. There are at least cameras directly outside of the holding cells where § 87(2)(b) and § 87(2)(b) were searched. No drugs or contraband were recovered during those strip-searches. § 87(2)(b) and § 87(2)(b) were issued summonses for jaywalking by PO Ferguson, and § 87(2)(b) an additional summons for possession of marijuana.

§ 87(2)(b) (01 Board Review) acknowledged that the officers told him to "find somewhere else to hang out" while he was celebrating his birthday outside with his friends. He acknowledged immediately crossing the street in the middle of the street with § 87(2)(b) and

§ 87(2)(b) At the stationhouse, § 87(2)(b) and § 87(2)(b) were lodged in holding cells that were directly next to one another. There was a bathroom near the holding cells and a room with a closed door. There was a security camera in the corner of the holding cell. § 87(2)(b) heard officers ordering § 87(2)(b) to remove his clothing. After that, Sgt. Montilla, PO Ferguson, PO McCue, and PO Porras entered § 87(2)(b)'s holding cell. PO Ferguson ordered § 87(2)(b) to remove his shirt, undershirt, pants, and underwear. § 87(2)(b) complied with those orders. PO Ferguson told § 87(2)(b) he was "on camera" and ordered § 87(2)(b) to squat and cough. While he did that, § 87(2)(b) heard the photo capture noise of a cellphone, accompanied by a camera flash.

§ 87(2)(b) was unavailable to the investigation (see IA for contact attempts).

Sgt. Montilla (02 Board Review) said that he observed the three men about to cross the street in the middle of the street and ordered them to cross at the crosswalk, but they crossed in the middle of the street anyway. The men "posted up like they wanted to fight" when Sgt. Montilla stopped them, so Sgt. Montilla called an "85." Upon obtaining their information, § 87(2)(b) and § 87(2)(b) were placed into handcuffs because each had an open warrant. When Sgt. Montilla's officers frisked and searched § 87(2)(b) and § 87(2)(b) at the initial scene and later at the stationhouse, he observed both men making "furtive movements" which he described as shifting their bodies away from officers (while in handcuffs), making it difficult for those officers to search their groin areas. Sgt. Montilla was never personally involved in frisking and searching the men, and Sgt. Montilla did not provide any additional description of the "furtive movements" the men were making. Sgt. Montilla ordered his officers to strip-search § 87(2)(b) and § 87(2)(b) because of their furtive movements and for no additional reasons that he could recall. Sgt. Montilla did not recall which officers he ordered to conduct the strip search. He also did not recall if he was present for the strip-search. Sgt. Montilla acknowledged that § 87(2)(b) and § 87(2)(b) were strip-searched in the holding cells which have cameras inside but Sgt. Montilla never learned of any photographs being taken during § 87(2)(b) and § 87(2)(b)'s strip-searches. Sgt. Montilla said officers are prohibited from taking photographs during strip-searches.

Sgt. Montilla's body-worn camera footage captured § 87(2)(b) and § 87(2)(b) being frisked by officers at the initial scene. At 4:44, Sgt. Montilla is heard saying, "We're going to 'SS' when we get back to the house."

PO Ferguson (04 Board Review) acknowledged frisking and searching § 87(2)(b) at the initial scene. PO Ferguson said he never personally observed any behavior for both § 87(2)(b) and § 87(2)(b) that justified a strip-search, though he learned from other officers who were dealing with § 87(2)(b) at the stationhouse that he was moving around when officers searched his genital area, preventing officers from conducting a proper search of his genital area, and that information was conveyed to Sgt. Montilla, who ordered his strip-search. PO Ferguson conducted § 87(2)(b)'s strip-search with Sgt. Montilla, PO Porras, and PO McCue. There is a camera that points toward the holding cells directly outside of the holding cells, but there are no cameras inside of the cells. PO Ferguson denied telling § 87(2)(b) that he was on camera, and denied taking any photographs of him. PO Ferguson acknowledged dealing with § 87(2)(b) at the PSA 4 stationhouse, but recalled nothing about his strip-search, though the PSA 4 Command Log from that date lists that PO Ferguson conducted strip-searches of both men.

PO Ferguson's body-worn camera footage captured him frisking § 87(2)(b) at the initial scene. At 7:38, PO Ferguson says to § 87(2)(b) "Just stay still, okay?" § 87(2)(b) replies, "I got personal weed on me." PO Ferguson says, "Where's your weed at?" § 87(2)(b)

says, “I have no idea. You can check.” An officer holds § 87(2)(b) s arm while PO Ferguson proceeds with searching him. At 8:24, PO Ferguson finds a small bag of marijuana in § 87(2)(b) s front right pocket. At 8:42, PO Ferguson asks § 87(2)(b) to spread his legs apart, and he complies. PO Ferguson frisks § 87(2)(b) s legs. At 8:53, PO Ferguson says, “Alright, good.” Sgt. Montilla says, “He’s good?” PO Ferguson replies, “Yes.” Sgt. Montilla asks PO Ferguson to put § 87(2)(b) in their van, and PO Ferguson does that.

PO McCue (03 Board Review) acknowledged frisking § 87(2)(b) at the initial scene and transporting him to the PSA 4 stationhouse. PO McCue did not remember when or why Sgt. Montilla ordered § 87(2)(b) s strip-search, which Sgt. Montilla conducted while PO McCue stood alongside him as backup. PO Ferguson was also there. PO McCue did not recall if § 87(2)(b) was strip-searched, but said if § 87(2)(b) was strip-searched, he was involved in conducting it. PO McCue said that no recordings were taking during § 87(2)(b) s strip-search, and that there are no cameras inside of the holding cells, but there are cameras located directly outside of the cells where prisoners are searched before being lodged. PO McCue said a photograph was “absolutely not” taken of § 87(2)(b) during his strip-search and that he would have reported it if that happened.

PO Porras (05 Board Review) acknowledged frisking § 87(2)(b) at the initial scene with PO McCue. PO Porras conducted § 87(2)(b) and § 87(2)(b) s strip-searches after Sgt. Montilla ordered them, and PO Porras did not know why Sgt. Montilla ordered those strip-searches. PO Porras did not recall if Sgt. Montilla was present for those strip-searches. PO Porras said there is a camera in the prisoner lodging area but not cameras inside of the holding cells. PO Porras denied that any photos were taken of § 87(2)(b) during his strip-search.

Sergeant Carlos Roberts (16 Board Review), of PSA 4, the desk officer during this incident, made a Command Log entry related to these strip-searches (15 Board Review). His entry generally reads, with some words illegible that he could not make out during his interview, “PO Ferguson conducted a strip-search of prisoners § 87(2)(b) and § 87(2)(b) at 0035 due to furtive movements. Approved by Sgt. Montilla. Negative results.” Sgt. Roberts said he was otherwise uninvolved because Sgt. Montilla was present and his supervision was not needed.

PO Williamson’s body camera captured the interaction in the stationhouse, and reveals the officers frisking and searching § 87(2)(b) and § 87(2)(b) in front of the main desk area. Sgt. Montilla is behind the desk, directly in front of § 87(2)(b) and § 87(2)(b). There is no mention of the furtive moments that the men were allegedly making. § 87(2)(b) discusses loose amoxicillin that he had on his person, that an officer thought was ecstasy, but that Sgt. Montilla confirms is amoxicillin in the clip. At 22:32, Sgt. Montilla is heard saying, “I want to ‘SS’.” At 27:02, PO Williamson lodges § 87(2)(b) in a holding cell, and frisks him one last time. At 27:11, PO Williamson exits the cell and at 7:55, he closes the cell door, with § 87(2)(b) inside.

The stationhouse video footage captures PO Ferguson and PO McCue entering § 87(2)(b) and § 87(2)(b) s holding cells, but the inside of the cells are not visible, and the footage is thus inconclusive in regards to PO Ferguson taking a photograph of § 87(2)(b).

NYPD Patrol Guide, Procedure 208-05 (06 Board Review) states that a frisk, performed primarily to ensure the personal safety of the arresting officer, is a methodical external body examination of the arrested person conducted immediately after apprehension to find weapons, evidence, or contraband. Upon arriving at the precinct of arrest, the arresting officer shall conduct a thorough search of the prisoner’s person and clothing to ensure the safety of all persons within the facility and to remove weapons, contraband, and evidence not discovered by the frisk. A strip search may only be conducted when the arresting officer reasonably suspects that weapons,

contraband, or evidence may be concealed upon the person or in the clothing in such a manner that they may not be discovered by the previous search methods. The supervisor authorizing the strip search is responsible for ensuring the search is conducted properly. A strip search shall be conducted in a secure area in utmost privacy.

Sgt. Montilla justified ordering the strip-searches because § 87(2)(b) and § 87(2)(b) were shifting their bodies while officers frisked them at the initial location and at the stationhouse, yet none of the officers who frisked the men requested the strip-search, cited having any suspicion of § 87(2)(b) or § 87(2)(b) concealing evidence, or independently knew why Sgt. Montilla ordered the strip-searches. Furthermore, Sgt. Montilla failed to properly conduct the strip-searches that he ordered, as per the Patrol Guide, as those strip-searches were undisputedly conducted in open holding cells with cameras in or around them, denying § 87(2)(b) and § 87(2)(b) of the privacy supposedly to be granted to civilians during a strip-search. § 87(2)(b)

It is clearly undisputed that the officers, by default, risked recording § 87(2)(b) by strip-searching him in a holding cell with security cameras nearby. However, regarding the specific allegation of PO Ferguson photographing § 87(2)(b) with a cellphone, § 87(2)(g)

without the empowerment to search PO Ferguson's department or personal cellphone, § 87(2)(g)

Allegation D - Abuse of Authority: Police Officer Oscar Quezada did not process § 87(2)(b)'s complaint regarding officers.

It is undisputed that § 87(2)(b) called the CCRB and filed this complaint the day after this incident, on June 3, 2018, at 2:32 p.m.

§ 87(2)(b) said that when he went to the PSA 4 stationhouse later that same day sometime in the afternoon before 2:32 p.m., (the time at which he called the CCRB), § 87(2)(b) asked PO Quezada, a tall, Hispanic officer, who was in his forties, who was sitting at the main desk alone, to file a complaint regarding his strip-search. PO Quezada allegedly told § 87(2)(b) to call the CCRB and did not offer to file § 87(2)(b)'s complaint. No other officers in the stationhouse witnessed the interaction. § 87(2)(b) left the stationhouse and immediately called the CCRB.

PO Quezada (07 Board Review) is a 39-year-old, 6'3" tall, Hispanic man, who was the telephone switchboard operator during this incident. PO Quezada interacts with civilians as the telephone switchboard operator and he sits at the main desk, but PO Quezada had no recollection of ever seeing § 87(2)(b) in the stationhouse, asking to file a complaint about a strip-search. When civilians ask PO Quezada to file complaints, PO Quezada refers them to the desk officer, and he would never tell someone to call the CCRB in lieu of filing a complaint for them.

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (09 Board Review).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (10 Board Review).
- Sgt. Montilla has been a member-of-service for 10 years and has been a subject in five CCRB complaints and nine allegations, none of which were substantiated. CCRB Case 201804864 involves two strip-search allegations. § 87(2)(g)
- PO Ferguson has been a member-of-service for four years and has been a subject in five CCRB complaints and 12 allegations, none of which were substantiated. § 87(2)(g)
- PO McCue has been a member-of-service for nine years and has been a subject in six CCRB complaints and 20 allegations, of which three were substantiated.
 - Case 201311395 involved substantiated allegations of a refusal to provide name and shield number, and a threat of arrest. The Board recommended charges and the NYPD imposed instructions. § 87(2)(g), § 87(4-b)
 - Case 201709676 involved a substantiated allegation refusal to provide name and shield number. The Board recommended Command Discipline A and the NYPD disposition is not listed.
 - § 87(2)(g)
- PO Porras has been a member-of-service for 13 years and has been a subject nine CCRB complaints and 22 allegations, none of which were substantiated. § 87(2)(g)
- PO Quezada has been a member-of-service for 13 years and has been a subject in two CCRB complaints and six allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- § 87(2)(b)
- § 87(2)(b)
- § 87(2)(b)'s attorney, Jorge Vasquez, filed a Notice of Claim with the City of New York on § 87(2)(b)'s behalf, claiming emotional damage from reckless NYPD conduct and seeking \$10,000 as redress. § 87(2)(b)
- § 87(2)(b) has not filed a notice of claim regarding this incident (13 Board Review).

Squad No.: 7

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date